

1 Constance E. Norton, CA Bar No. 146365
2 cnorton@littler.com
3 LITTLER MENDELSON
4 A Professional Corporation
5 650 California Street
6 20th Floor
7 San Francisco, CA 94108.2693
8 Telephone: 415.433.1940

9 J. Mark Ogden, CA Bar No. 159085
10 mogden@littler.com
11 LITTLER MENDELSON P.C.
12 2425 E. Camelback Road, Suite 900
13 Phoenix, Arizona 85016
14 Telephone: 602.474.3600
15 Facsimile: 602.957.1801

16 Attorneys for Defendant
17 GENERAL ELECTRIC COMPANY

18
19 Abraham N. Goldman, CA Bar No. 102080
20 agoldman@succeed.net
21 ABRAHAM N. GOLDMAN & ASSOCIATES LTD
22 PO Box 120 / 12896 Rices Crossing Road
23 Oregon House, CA 95962-0120
24 Telephone: 530.692.2267
25 Facsimile: 530.692.2543

26 Attorneys for Plaintiff
27 ROB DELSMAN

28
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROB DELSMAN,

Plaintiff,

v.

GENERAL ELECTRIC COMPANY,

Defendant.

Case No. CV 09-2414 SBA

**FURTHER STIPULATION AND ORDER
VACATING PRETRIAL DEADLINES &
TRIAL DATE**

Courtroom: 1, 4th Floor

Judge: Honorable Sandra B. Armstrong

Trial Date: September 26, 2011

TO THE HONORABLE COURT AND CLERK OF THE COURT:

TAKE NOTICE THAT THE undersigned counsel of record for Plaintiff and Defendant hereby stipulate and request that the Court enter the following Order forthwith based on the following:

1. Plaintiff's Counsel is completely deaf in both ears and depends 100% for his hearing on cochlear implants in his right and left ears. In 2010, Plaintiff's Counsel, a sole practitioner, developed a major infection in his right implant, which not only threatened a permanent loss of his right sided assisted hearing, but also caused the inner portion of the implant to migrate across his skull from its position under his scalp and eventually penetrate the scalp and skin to be openly exposed. Prolonged intensive antibiotic treatment and innovative surgery (Mr. Goldman is only the fourth successful patient for this procedure) prevented the loss of this right ear.

2. After an initial successful recovery, Mr. Goldman developed a new infection, or continuation of the infection, at the site of the right implant, which again threatens total hearing loss, and continues to suffer substantial health problems, including a major infection that will again require him to have major surgery (the second in six months) to avoid imperiling his cochlear implants and the total loss of his right side hearing. Currently, without the use of the right implant, his hearing acuity is reduced by more than 50%. It is anticipated that the second surgery will take place in Los Angeles within the next four to six weeks when the infection is abated. The recovery period will be a minimum of an additional six to eight weeks.

3. As a direct result, Plaintiff's participation in discovery has been delayed to a point that it has jeopardized Defendant's ability to timely file any dispositive motion, thus providing good cause for the continuances herein proposed.

4. Based on the following, the parties respectfully request that the Court accelerate to a date in early June 2011, the Mandatory Settlement Conference currently set for July, 6, 2011 and that the Court vacate and reset the current trial and discovery cut-off dates.

5. By way of background, a mediation was held in this case on October 28, 2009. When mediation was unsuccessful, the Court set a trial date of September 27, 2010. *See* Docket No. 18.

1 6. On January 14, 2010, Defendant served Requests for Production, Requests for
2 Admissions and Special Interrogatories. On February 3, 2010, Defendant noticed the depositions of
3 Plaintiff and his wife to take place in March 2010.

4 7. Due to the unexpected death of Plaintiff's son in November 2009, he had been
5 unable to participate in the prosecution of this matter, was unable to adequately respond to the
6 discovery requests or appear at his deposition. Delay was exacerbated, in part, due to serious family
7 issues faced by Plaintiff's Counsel. Given their seriousness, Defense Counsel agreed to stipulate to
8 vacate the trial date. The Stipulation was filed on February 25, 2010. *See* Docket No. 22. The
9 Court then entered the Stipulation and Order on March 3, 2010, continuing the trial to February 7,
10 2011. *See* Docket No. 23.

11 8. As a result of the events described in Paragraph No. 6, Defense Counsel also
12 granted Plaintiff an extension to and including March 15, 2010 in which to respond to the previously
13 served written discovery. After several reminders, on April 8, 2010, Plaintiff served a response only
14 to the Requests for Admission. To date, no responses to Special Interrogatories, Requests for
15 Production or responsive documents have been served.

16 9. On May 31, 2010, Defense Counsel contacted Plaintiff's Counsel to set dates
17 for Plaintiff's deposition and to inquire as to the whereabouts of the remainder of Plaintiff's
18 discovery responses. On July 14, 2010, having received no substantive response, Defense Counsel
19 wrote Plaintiff's Counsel expressing concern that the delay in Plaintiff's response to discovery and
20 scheduling Plaintiff's deposition was again jeopardizing Defendant's ability to bring a dispositive
21 motion.

22 10. In response, Plaintiff's Counsel advised that he had been unable to previously
23 respond because he was required to have surgery caused by a major infection that had begun on June
24 1, 2010 and that imperiled his cochlear implants. Recovery from the surgery was anticipated to take
25 several weeks.

26 11. The parties then entered into a second Stipulation to vacate the trial date, *see*
27 Docket No. 25, and additionally initiated settlement discussions.

1 12. Upon receipt of the parties' second Stipulation, the Court vacated the
2 February 2011 trial date and ordered the parties to appear for a telephonic Case Management
3 Conference on September 30, 2010. *See* Docket No. 26. The parties filed their joint Case
4 Management Conference Statement on August 25, 2010. *See* Docket No. 27.

5 13. When settlement discussions were not further pursued, Defense Counsel
6 issued subpoenas to several of Plaintiff's medical providers to which Plaintiff objected in early
7 September 2010. Thereafter, Defense Counsel withdrew the subpoena subject to re-issue on more
8 narrow grounds.

9 14. On September 30, 2010, the Court's clerk conducted a Case Management
10 Conference and a new trial date was set for September 26, 2011.

11 15. Defense Counsel was in trial in Contra Costa Superior Court in November
12 2010. Thereafter, on December 30, 2010, she contacted Plaintiff's Counsel again to obtain
13 Plaintiff's written discovery responses and to advise that in order for Defendant to meet the
14 dispositive motion deadline, Plaintiff's deposition had to go forward no later than early February
15 2011.

16 16. On January 5, 2011, Plaintiff's Counsel advised Defense Counsel that his
17 client was out of town, but that they would discuss the case that weekend. On January 19, 2011,
18 having received no response, Defense Counsel once again contacted Plaintiff's Counsel to schedule
19 depositions.

20 17. On January 26, 2011, Plaintiff's Counsel advised that he was having a
21 recurrence of the infection that had necessitated his surgery the prior July 2010.

22 18. Additionally on January 26, 2011, Defense Counsel served deposition notices
23 setting the depositions of Plaintiff and his wife for February 21 and 22, 2011, respectively.
24 Plaintiff's Counsel advised that the dates did not work due to pre-existing holiday plans, and that he
25 would try to put together dates in late February 2011 (one week before Defense Counsel is scheduled
26 to begin a jury trial in Alameda County Superior Court). No further dates for Plaintiff's deposition
27 have been discussed.
28

19. Plaintiff's counsel's health issues continue to significantly hinder Plaintiff's ability to respond to Defendant's discovery, settlement demands, and/or to initiate Plaintiff's discovery. Plaintiff's Counsel is a solo practitioner, and as a result, is unable to pass the responsibilities of this matter to another attorney in his office. Adequate discovery will not have taken place by the current date by which the parties must file dispositive motions, thus forming the foundation for this requested continuance.

20. In 2011, Defense Counsel is scheduled for trial in other matters on March 7, 2011 (Alameda County Superior Court); August 22, 2011 (Contra Costa Superior Court), has class certification motions in a nationwide putative class action in April 2011, and has prepaid personal plans beginning October 18, 2011.

21. For the above-stated reasons, the parties respectfully request that the dates set forth above be reset, that the Court accelerate the settlement conference, and reset the pretrial and trial dates as meets the Court's availability.

22. While they had hoped that the prior request would be their last, the parties represent that this will be the final request for a continuance of the trial and pre-trial deadlines in this matter. Once Plaintiff's Counsel's health is restored, Plaintiff intends to vigorously pursue the litigation.

Due to Plaintiff's Counsel's on-going health concerns described above, the parties jointly and respectfully request that:

1. Fact discovery cut-off and expert disclosures be continued from March 31, 2011 to July 29, 2011;

2. Dates experts to be named continued from no later than March 31, 2011 to July 29, 2011;

3. Dispositive motion hearing cut-off date continued from May 20, 2011 to September 23, 2011;

4. That the Court accelerate the mandatory settlement conference on July 6, 2011 to early June 2011.

1 5. That the Court vacate and reset the pretrial conference date of September 13,
2 2011 and trial date of September 26, 2011 to January 10, 2012 and January 23, 2012, respectively.

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4 **IT IS SO STIPULATED.**

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6 Dated: February 3, 2011

Respectfully submitted,

7
8 /s/ Abraham N. Goldman

9 Abraham N. Goldman
10 ABRAHAM N. GOLDMAN &
11 ASSOCIATES LTD
Attorneys for Plaintiff
ROB DELSMAN

12 Dated: February 3, 2011

Respectfully submitted,

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14 /s/ Constance E. Norton

15 Constance E. Norton
16 LITTLER MENDELSON P.C.
17 Attorneys for Defendant
18 GENERAL ELECTRIC COMPANY
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ORDER

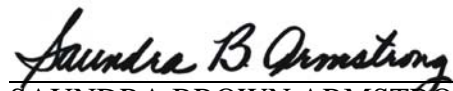
Based upon the parties' Stipulation, and good cause appearing, the deadlines listed in the Order for Pretrial Preparation, filed October 1, 2010, (Docket No. 29) are modified as follows:

- (1) Fact discovery cut-off and expert disclosure: July 29, 2011
- (2) Expert discovery cut-off: July 29, 2011
- (3) Dispositive motion cut-off: September 27, 2011
- (4) Mandatory Settlement Conference: **During the Months of October or November 2011.**
- (5) Pretrial preparation due: January 17, 2012
- (6) Motions in limine/objections to evidence due: January 24, 2012
- (7) Oppositions to motion in limine/objections to evidence due: January 31, 2012
- (8) Reply to oppositions due: February 7, 2012
- (9) Pretrial Conference: **February 14, 2012 at 1:00 p.m.**
- (10) Trial Date: **February 27, 2012 at 8:30 a.m. (six day jury trial)**

All other provisions of the Order for Pretrial Preparation shall remain unchanged.

IT IS SO ORDERED.

Dated: 2/17/11


SAUNDRA BROWN ARMSTRONG
United States District Judge

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